

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 13.

MEDICAL BOARD OF CALIFORNIA
NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:

Fees for Petitions for Penalty Relief

NOTICE IS HEREBY GIVEN that the Medical Board of California (Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this notice.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be **received by the Board at its office no later than by Monday, December 30, 2024**, or must be received by the Board at the hearing, should one be scheduled.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 2018 and 2307.5 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC sections 2307 and 2307.5, the Board is considering adopting section 1352.3 and amending section 1359 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Senate Bill (SB) 815 (Roth, Chapter 294, Statutes of 2023) under BPC section 2307.5, authorizes the Board to establish a fee to be paid by an individual seeking to reinstate their license or to modify their penalty pursuant to BPC section 2307. Such petitions are collectively referred to herein as “petitions for penalty relief.”

On May 24, 2024, the Board reviewed and approved proposed text to establish fees for petitions for penalty relief as authorized by BPC section 2307.5, and authorized Board staff to move forward with this proposed rulemaking.

This proposed rulemaking will do the following:

Adopt 16 CCR section 1352.3

16 CCR 1352.3, subdivision (a), sets forth the fee required to process a petition for modification or termination of probation as \$1,949. Subdivision (b) sets forth the fee required to adjudicate a petition for modification or termination of probation once the petition is accepted by the Board to be set for hearing as \$19,043. Subdivision (c) sets forth the fee required to process a petition for reinstatement of a revoked certificate, or a certificate surrendered pursuant to a stipulation to settle a disciplinary action as \$3,738. Subdivision (d) sets forth the fee required to adjudicate a petition for reinstatement of a revoked certificate, or a certificate surrendered pursuant to a stipulation to settle a disciplinary action once the petition is accepted by the Board to be set for hearing as \$19,043.

Amend 16 CCR section 1359

Existing law indicates under subdivision (a) that a petition for modification or termination of probation or a petition for reinstatement of a revoked certificate shall be filed on a form provided by the division. It also states under subdivision (b) that consideration shall be given to such a petition only when a formal request has been filed in the division's office in Sacramento at least 30 days prior to a regular meeting of the division or appropriate medical quality review panel.

This rulemaking proposes to amend subdivision (a) of section 1359 to clarify that it also applies to surrendered certificates requiring a petition for reinstatement pursuant to BPC section 2307, and that a petition for modification or termination of probation or a petition for reinstatement of a revoked or surrendered certificate shall be accompanied by the applicable nonrefundable fee required by section 1352.3 for processing the petition. This rulemaking also proposes to strike the term "division," which is an antiquated term no longer applicable to the Board's current structure.

This rulemaking proposes to amend subdivision (b) of section 1359 to strike old language regarding when consideration is given to a petition for penalty relief, as it is not relevant to the Board's current process. Subdivision (b) is amended to set forth how fees are to be paid to the Board, and to indicate that the processing of a petition shall commence only after the payment clears the petitioner's bank, and the funds are deposited in the Board's account within 30 days of the check or money order being deposited.

This rulemaking proposes to add subdivision (c) to section 1359 to indicate that the Board shall provide written notice to the petitioner that the Board has accepted the petition to be set for a hearing when required conditions are met and sets forth what the written notice shall entail.

This rulemaking proposes to add subdivision (d) to section 1359 to indicate that failure to comply with the requirements of this section shall result in the petition being rejected as incomplete, and states that the Board shall provide written notice of such rejection to the petitioner and the reasons, therefore.

Anticipated Benefits of Proposal

The Board has determined that this regulatory proposal will further its mission of consumer protection by preserving the Board's time and financial resources through establishing a fee to be paid by individuals seeking to reinstate their license or to modify or terminate their order of probation early. Requiring a fee will incentivize petitioners to focus on their rehabilitation efforts and to avoid filing petitions for penalty relief prematurely. Additionally, this proposed rulemaking will improve clarity of the Board's regulations relating to petitions for penalty relief by eliminating old language that is no longer applicable to the Board's structure and process.

Additionally, the Board has determined that this regulatory proposal will benefit the health and welfare of California residents by updating and clarifying the regulations for petitions for penalty relief to remove outdated language and add a fee to process and adjudicate such petitions as described above, which will preserve the Board's time and financial resources. This regulation does not impact worker safety or the state's environment, as this proposal is not related to any of those issues.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing this regulatory proposal, the Board conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THIS PROPOSED ACTION

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Fiscal impact to the state agency or other state agencies, and/or costs or savings in federal funding: Based on historical data, the Board receives approximately 54 petitions to modify and 12 petitions of reinstatement per year. The Board is currently incurring workload and costs without receiving any financial reimbursements.

Under this proposal, the Board estimates revenues of approximately \$1.4 million per year and up to \$14 million over a ten-year period.

The regulations do not result in costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None.

Cost to any Local Agency or School District for which Government Code Sections 17500 - 17630 Require Reimbursement: None.

Mandate Imposed on Local Agencies or School Districts: None.

Significant Effect on Housing Costs (and, if applicable, including any estimated costs of compliance or potential benefits of a building standard): None.

BUSINESS IMPACT ESTIMATES

The Board has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the fact that individuals who have been compliant with the law and have not had their license revoked, have not surrendered their license to settle a disciplinary action, and have not had their license placed on probation will not be impacted by this proposed rulemaking. Additionally, not every individual who has faced such discipline chooses to file a petition for penalty relief. In fiscal year (FY) 21-22, the Board received 16 petitions for reinstatement of a license; in FY 22-23, the Board received six; and in FY 23-24, the Board received 13. In FY 21-22, the Board received 60 petitions to modify or terminate probation early; in FY 22-23, the Board received 47; and in FY 23-24, the Board received 55.

Cost Impact on Representative Private Person or Business

The law does not require individuals to file petitions for penalty relief. Individuals can choose to accept the discipline imposed against their license without thereafter filing a petition for penalty relief. If they do choose to file a petition for penalty relief, they will be required to pay the Board's costs associated with such petitions as follows:

- The fee required to process a petition for modification or termination of probation is \$1,949.
- The fee required to adjudicate a petition for modification or termination of probation once the petition is accepted by the Board to be set for hearing as specified in Section 1359 is \$19,043.
- The fee required to process a petition for reinstatement of a revoked certificate or a certificate surrendered pursuant to a stipulation to settle a disciplinary action is \$3,738.
- The fee required to adjudicate a petition for reinstatement of a revoked certificate, or a certificate surrendered pursuant to a stipulation to settle a disciplinary action, once the petition is accepted by the Board to be set for hearing as specified in Section 1359 is \$19,043.

Based on historical data, the Board receives approximately 54 petitions to modify and 12 petitions of reinstatement per year.

Individuals opting to submit a petition of penalty relief will be required to pay fees to the Board, which would result in costs of approximately \$1.4 million per year and up to \$14 million over a ten-year period.

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS

Impact on Jobs / Businesses

The Board has determined that this regulatory proposal will not have any impact on the following:

- 1) the creation or elimination of jobs within the state,
- 2) the creation of new businesses or the elimination of existing businesses within the state, or,
- 3) the expansion of businesses currently doing business within the state.

This proposal would not have any of the above-referenced impacts as explained in the “Business Impact Estimates” section of this notice.

Benefits of Regulation:

The Board has determined that this regulatory proposal will benefit the health and welfare of California residents by updating and clarifying the regulations for petitions for penalty relief to remove outdated language and add a fee to process and adjudicate such petitions as described above, which will preserve the Board’s time and financial resources. This regulation does not impact worker safety or the state’s environment, as this proposal is not related to any of those issues.

Business Reporting Requirements

The regulatory action does not require businesses to file a report with the Board.

Effect on Small Business

The Board has determined that the proposed regulations will not affect small businesses. The proposed regulations only affect individual licensees in a disciplinary status who are petitioning for modification or termination of probation or petitioning for reinstatement.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed; would be as effective and less burdensome to affected private persons than the proposal described in this Notice; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815, during the written comment period, or at the hearing if one is requested.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board by contacting the person named below, or by accessing the Board's website at http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the persons designated in this Notice as the Contact Persons and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the Contact Persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Alexandria Schembra
Address:	Medical Board of California 2005 Evergreen Street, Ste. 1200 Sacramento, CA 95815
Telephone No.:	(916) 263-2466
Fax No.:	(916) 263-2387
E-Mail Address:	regulations@mbc.ca.gov

The backup contact person is:

Name: Kerrie Webb
Address: Medical Board of California
2005 Evergreen Street, Ste. 1200
Sacramento, CA 95815
Telephone No.: (916) 263-2389
Fax No.: (916) 263-2387
E-Mail Address: regulations@mbc.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text ,if any, can be accessed through the Board’s website at http://www.mbc.ca.gov/About_Us/Laws/Proposed_Regulations.